



Billing Code: 9111-52-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Parts 59, 61**

Docket ID FEMA-2018-0027

RIN 1660-AA93

**National Flood Insurance Program: Removal of Monroe County Pilot Inspection Program Regulations**

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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**SUMMARY:** The Federal Emergency Management Agency (FEMA) is revising its regulations to remove a pilot inspection program under the National Flood Insurance Program (NFIP). This pilot inspection program applied to Monroe County, Florida. FEMA terminated this program on June 28, 2013, and is now removing the applicable regulations from the Code of Federal Regulations because they are no longer necessary.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The docket for this rulemaking is available for inspection using the Federal eRulemaking Portal at <http://www.regulations.gov> and can be viewed by following that Web site's instructions.

**FOR FURTHER INFORMATION CONTACT:** Liza Davis, Associate Chief Counsel, Regulatory Affairs, Office of Chief Counsel, Federal Emergency Management Agency,

500 C Street, SW., Washington, DC 20472, 202-646-4046, or (email)

*liza.davis@fema.dhs.gov*.

## SUPPLEMENTARY INFORMATION:

### I. Background and Discussion of the Rule

The National Flood Insurance Act of 1968, as amended (NFIA), Title 42 of the United States Code (U.S.C.) 4001 *et seq.*, authorizes the Administrator of the Federal Emergency Management Agency (FEMA) to establish and carry out a National Flood Insurance Program (NFIP) to enable interested persons to purchase insurance against loss resulting from physical damage to or loss of property arising from floods in the United States.<sup>1</sup> Under the NFIA, FEMA may only grant flood insurance to properties within communities that have adopted adequate land use and control measures.<sup>2</sup> FEMA implemented a pilot inspection program on June 27, 2000, at 44 CFR 59.30, which applied to structures located in Monroe County, the Village of Islamorada in Monroe County, and the City of Marathon<sup>3</sup> in Monroe County, Florida. 65 FR 39725, 39748 (June 27, 2000). The pilot program was designed to help the communities verify that structures in these locations complied with the community's floodplain management ordinances and to help FEMA ensure that property owners paid flood insurance premiums to the NFIP commensurate with their flood risk. See 44 CFR 59.30(a); 79 FR 2468 (Jan. 14, 2014). FEMA consulted with the participating communities during the

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<sup>1</sup> See 42 U.S.C. 4011(a).

<sup>2</sup> See 42 U.S.C. 4022(a)(1).

<sup>3</sup> Although 44 CFR 59.30(a) only lists Monroe County and the Village of Islamorada, Florida, the section provides that the pilot inspection procedure will cover areas within Monroe County that incorporate on or after January 1, 1999. The City of Marathon was incorporated on Nov. 30, 1999, and was therefore also covered by the program. See City of Marathon Charter § 3, at [https://library.municode.com/fl/marathon/codes/code\\_of\\_ordinances?nodeId=PTICHLRELA\\_SPACH\\_S3INMUCOLI](https://library.municode.com/fl/marathon/codes/code_of_ordinances?nodeId=PTICHLRELA_SPACH_S3INMUCOLI).

pilot program and in 2013 determined that the communities had fulfilled the requirements of the inspection procedure. As a result, FEMA notified the three participating communities that the pilot inspection procedure under 44 CFR 59.30 would terminate on June 28, 2013, pursuant to 44 CFR 59.30(c)(1), which authorizes the Federal Insurance Administrator to establish the termination date for the pilot program. FEMA published a notice in the Federal Register on January 14, 2014, announcing that the pilot inspection program was terminated for Monroe County, the Village of Islamorada, and the City of Marathon, Florida. See 79 FR 2468 (Jan. 14, 2014). FEMA is now removing section 59.30 as it is no longer necessary. FEMA is also removing Appendices A(4) through A(6) of 44 CFR Part 61, which contain the individual endorsements for these three communities to the Standard Flood Insurance Policy (SFIP), indicating their participation in the pilot program.

## II. Regulatory Analysis

### A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the Federal Register and provide interested persons the opportunity to submit comments. See 5 U.S.C. 553(b) and (c). The APA provides an exception to this prior notice and comment requirement for rules of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A). This final rule is a procedural rule promulgated for agency efficiency purposes. FEMA is removing regulations related to the Monroe County pilot inspection program which has been terminated. Thus, removing these regulations reflects FEMA's current authority and will not affect the substantive rights or interests of the public.

The APA also provides an exception from notice and comment procedures when an agency finds for good cause that those procedures are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(3)(B). FEMA finds good cause to issue this rule without prior notice or comment, as such procedures are unnecessary. The removal of these regulations will have no substantive effect on the public because the authority for the pilot program has terminated.

Further, the APA generally requires that substantive rules incorporate a 30-day delayed effective date. 5 U.S.C. 553(d). This rule, however, is merely procedural and does not impose substantive requirements; thus, FEMA finds that a delayed effective date is unnecessary.

B. Executive Orders 12866, “Regulatory Planning and Review”, 13563, “Improving Regulation and Regulatory Review”, and 13771, “Reducing Regulation and Controlling Regulatory Costs”

Executive Orders 13563 (“Improving Regulation and Regulatory Review”) and 12866 (“Regulatory Planning and Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the

cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a “significant regulatory action” under section 3(f) of Executive Order 12866.

Accordingly, the rule has not been reviewed by OMB. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* OMB’s Memorandum “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

FEMA is issuing a final rule that will remove the pilot inspection program at 44 CFR 59.30, which describes inspection procedures to apply to Monroe County, Florida. The pilot program was designed to help the community verify that structures in this community complied with the community’s floodplain management ordinances and help the NFIP ensure that property owners paid flood insurance premiums to the NFIP commensurate with their flood risk. FEMA terminated the pilot program on June 28, 2013. FEMA therefore now removes it from regulation.

This rulemaking does not impose any changes to current programs and FEMA believes there would not be any costs imposed on State, Federal, Tribal or industry partners or stakeholders as a result of this rule.

The benefits of this rule result from removing the codification of a terminated pilot program. This will simplify the CFR and reduce confusion, and further align the regulations with FEMA’s current exercises of its authority.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, 110 Stat. 847, 858 – 9 (Mar. 29, 1996) (5 U.S.C. 601 note) require that special consideration be given to the effects of regulations on small entities. The RFA applies only when an agency is “required by section 553...to publish general notice of proposed rulemaking for any proposed rule.” 5 U.S.C. 603(a). An RFA analysis is not required for this rulemaking because FEMA is not required to publish a notice of proposed rulemaking.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501-1504, 1531-1536, 1571, pertains to any rulemaking which is likely to result in the promulgation of any rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation) or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements.

FEMA has determined that this rulemaking will not result in the expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of \$100,000,000 or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

E. Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, 109 Stat. 163, (May 22, 1995) (44 U.S.C. 3501 *et seq.*), FEMA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless FEMA obtains approval from the Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number. FEMA has determined that this rulemaking does not contain any collections of information as defined by that Act.

F. Privacy Act/E-Government Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A “record” is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. *See* 5 U.S.C. 552a(a)(4). A “system of records” is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be

collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

The system of record for the NFIP, DHS/FEMA-0003 – National Flood Insurance Program Files, was published in the *Federal Register* on May 19, 2014 (79 FR 28747). This rule does not impact this existing system of record, nor does it create a new system of record. Therefore, this rule does not require coverage under an existing or new Privacy Impact Assessment or System of Records Notice.

G. Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments”

Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal government, or the agency consults with Tribal officials.



Although Tribes that meet the NFIP eligibility criteria can participate in the NFIP in the same manner as communities,<sup>4</sup> FEMA has reviewed this final rule under Executive Order 13175 and has determined that it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This rule removes the pilot inspection program concerning Monroe County, Florida, which FEMA has terminated. The removal of these regulations therefore will have no substantive effect on the public and will not affect the substantive rights or interests of Indian Tribal governments.

#### H. Executive Order 13132, “Federalism”

Executive Order 13132, “Federalism,” 64 FR 43255, August 10, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA has determined that this rulemaking does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

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<sup>4</sup> Although the NFIP does not explicitly reference Tribal governments, FEMA includes Tribal nations in its definition of a community. See 44 CFR 59.1.

government, and therefore does not have federalism implications as defined by the Executive Order.

I. Executive Order 11988, “Floodplain Management”

Pursuant to Executive Order 11988, each agency must provide leadership and take action to reduce the risk of flood loss and to minimize the impact of floods on human safety, health and welfare. In addition, each agency must restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and prescribe procedures to implement the policies and requirements of the Executive Order.

Before promulgating any regulation, an agency must determine whether the proposed regulations will affect a floodplain(s), and if so, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain(s). If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 is to promulgate a regulation that affects a floodplain(s), the agency must, prior to promulgating the regulation, design or modify the regulation in order to minimize potential harm to or within the floodplain, consistent with the agency’s floodplain management regulations and prepare and

circulate a notice containing an explanation of why the action is proposed to be located in the floodplain. This rule removes from regulation a previously-terminated pilot program. It is therefore procedural and will not have an effect on land use or floodplain management.

J. Executive Order 11990, “Protection of Wetlands”

Executive Order 11990, “Protection of Wetlands,” 42 FR 26961, May 24, 1977, sets forth that each agency must provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency’s responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

In carrying out the activities described in Executive Order 11990, each agency must consider factors relevant to a proposal’s effect on the survival and quality of the wetlands. Among these factors are: public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long term

productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses. Because this rule removes from regulation a previously-terminated pilot program, it is procedural and will not have an effect on land use or wetlands.

K. National Environmental Policy Act of 1969 (NEPA)

Under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 et seq., an agency must prepare an environmental assessment or environmental impact statement for any rulemaking that could significantly affect the quality of the human environment. FEMA has determined that this rulemaking does not significantly affect the quality of the human environment and consequently has not prepared an environmental assessment or environmental impact statement.

Rulemaking is a major Federal action subject to NEPA. Categorical exclusion A3 included in the list of exclusion categories at Department of Homeland Security Instruction Manual 023-01-001-01, Revision 01, Implementation of the National Environmental Policy Act, Appendix A, issued November 6, 2014, covers the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, and advisory circulars if they meet certain criteria provided in A3(a-f). This rule meets Categorical Exclusion A3(a), which covers rules of a strictly administrative or procedural nature.

L. Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801-808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the

rule; a concise general statement relating to the rule, including whether it is a major rule; the proposed effective date of the rule; a copy of any cost-benefit analysis; descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act; and any other information or statements required by relevant executive orders.

FEMA has sent this final rule to the Congress and to GAO pursuant to the CRA. The rule is not a "major rule" within the meaning of the CRA. It will not have an annual effect on the economy of \$100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

### **List of Subjects**

#### **44 CFR Parts 59 and 61**

Flood insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Emergency Management Agency amends 44 CFR Chapter I as follows:

#### **PART 59—GENERAL PROVISIONS**

1. The authority citation for Part 59 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

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#### **Subpart C—Pilot Inspection Program [Removed]**

2. Remove subpart C, consisting of § 59.30.

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## **PART 61—INSURANCE COVERAGE AND RATES**

3. The authority citation for Part 61 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

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### **APPENDIX A(4) TO PART 61 [Removed]**

4. Remove Appendix A(4) to Part 61.

### **APPENDIX A(5) TO PART 61 [Removed]**

5. Remove Appendix A(5) to Part 61.

### **APPENDIX A(6) TO PART 61 [Removed]**

6. Remove Appendix A(6) to Part 61.

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**Brock Long,**

*Administrator,*

*Federal Emergency Management Agency.*

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